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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

RODNEY DALE RAFOLS,)	NO. CV 16-5827-E
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION
)	
NANCY A. BERRYHILL, Acting)	
Commissioner of Social Security,)	
)	
Defendant.)	
)	

PROCEEDINGS

Plaintiff filed a complaint on August 4, 2016, seeking review of the Commissioner's denial of benefits. The parties consented to proceed before a United States Magistrate Judge on September 21, 2016. Plaintiff filed a motion for summary judgment on April 25, 2017. Defendant filed a motion for summary judgment on May 25, 2017. The Court has taken the motions under submission without oral argument. See L.R. 7-15; "Order," filed August 5, 2016.

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1 **BACKGROUND**

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3 Plaintiff asserted disability based on several alleged
4 impairments (Administrative Record ("A.R.") 40-51, 54-62, 71-75, 78-
5 81, 214-17, 225). Plaintiff testified to allegedly disabling
6 functional restrictions (A.R. 49-51, 61-62, 72-81).
7

8 Following a previous administrative remand, the Administrative
9 Law Judge ("ALJ") examined the medical record and heard testimony from
10 Plaintiff and a vocational expert (A.R. 17-310, 314-618). The ALJ
11 found Plaintiff's testimony "not entirely credible" (A.R. 26).
12 According to the ALJ, "[e]xaggeration of symptoms is repeatedly
13 suggested throughout the medical record. . . ." (A.R. 27). The ALJ
14 also observed that Dr. Alexander White, a non-treating, non-examining
15 physician, had believed that all of Plaintiff's alleged symptoms were
16 "significantly out of proportion to identifiable physical processes"
17 (A.R. 27, 443).
18

19 The ALJ determined that Plaintiff retains the residual functional
20 capacity ("RFC") to perform light work with certain restrictions (A.R.
21 23).¹ This RFC is largely consistent with the reports and opinions of
22 the physicians of record (A.R. 327-30, 333-50, 362-66, 378-79, 403,
23 441-53, 486, 539, 545-50). The ALJ discussed these reports and
24 opinions in considerable detail, including the report and opinion of
25

26
27 ¹ The ALJ found a capacity for light work not requiring
28 more than "occasional bending/stooping . . . or simple route
[sic] repetitive tasks with occasional public and coworker
contact" (A.R. 23).

1 Dr. White (A.R. 24-27). The ALJ declined to incorporate into the RFC
2 every aspect of Dr. White's opinion, omitting the aspect that would
3 have restricted Plaintiff to work not requiring more than occasional
4 reaching, handling, fingering, and feeling with the left hand (A.R.
5 23, 448). When asked to identify in writing "the particular medical
6 or clinical findings" supporting an alleged restriction to occasional
7 use of the left hand, Dr. White wrote only "giving Pt. the benefit of
8 doubt of injury to the L. hand" (A.R. 448).

9
10 The vocational expert testified that a person having the RFC
11 assessed by the ALJ could perform certain jobs existing in significant
12 numbers in the national economy (A.R. 83-84). In reliance on this
13 testimony, the ALJ found Plaintiff not disabled (A.R. 28-29). The
14 Appeals Council considered additional evidence but denied review (A.R.
15 1-5, 311-13, 619-907).

16
17 Plaintiff now argues a single alleged administrative error.
18 According to Plaintiff, the ALJ erred by assertedly failing to state
19 "specific and legitimate reasons" for not incorporating into the RFC
20 Dr. White's opinion restricting Plaintiff to occasional use of the
21 left hand.

22 23 **STANDARD OF REVIEW**

24
25 Under 42 U.S.C. section 405(g), this Court reviews the
26 Administration's decision to determine if: (1) the Administration's
27 findings are supported by substantial evidence; and (2) the
28 Administration used correct legal standards. See Carmickle v.

1 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,
2 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner,
3 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is "such
4 relevant evidence as a reasonable mind might accept as adequate to
5 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401
6 (1971) (citation and quotations omitted); see also Widmark v.
7 Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

8
9 If the evidence can support either outcome, the court may
10 not substitute its judgment for that of the ALJ. But the
11 Commissioner's decision cannot be affirmed simply by
12 isolating a specific quantum of supporting evidence.
13 Rather, a court must consider the record as a whole,
14 weighing both evidence that supports and evidence that
15 detracts from the [administrative] conclusion.

16
17 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and
18 quotations omitted).

19
20 Where, as here, the Appeals Council considered additional
21 evidence but denied review, the additional evidence becomes part of
22 the record for purposes of the Court's analysis. See Brewes v.
23 Commissioner, 682 F.3d at 1163 ("[W]hen the Appeals Council considers
24 new evidence in deciding whether to review a decision of the ALJ, that
25 evidence becomes part of the administrative record, which the district
26 court must consider when reviewing the Commissioner's final decision
27 for substantial evidence"; expressly adopting Ramirez v. Shalala, 8
28 F.3d 1449, 1452 (9th Cir. 1993)); Taylor v. Commissioner, 659 F.3d

1 1228, 1231 (2011) (courts may consider evidence presented for the
2 first time to the Appeals Council "to determine whether, in light of
3 the record as a whole, the ALJ's decision was supported by substantial
4 evidence and was free of legal error"); Penny v. Sullivan, 2 F.3d 953,
5 957 n.7 (9th Cir. 1993) ("the Appeals Council considered this
6 information and it became part of the record we are required to review
7 as a whole").

8 9 DISCUSSION

10
11 After consideration of the record as a whole, Defendant's motion
12 is granted and Plaintiff's motion is denied. The Administration's
13 findings are supported by substantial evidence and are free from
14 material² legal error. Plaintiff's arguments are unavailing.

15
16 Contrary to Plaintiff's arguments, the law did not require that
17 the ALJ state "specific and legitimate reasons" for failing to
18 incorporate into the RFC every aspect of Dr. White's opinion. The
19 Ninth Circuit's "specific and legitimate reasons" requirement applies
20 only to the opinions of treating physicians, and, perhaps, to the
21 opinions of other examining physicians. See Lester v. Chater, 81 F.3d
22 821, 830-31 (9th Cir. 1995); but see Nyman v. Heckler, 779 F.2d 528,
23 531 (9th Cir. 1986) (an ALJ need not explicitly detail the reasons for
24 rejecting the contradicted opinion of a non-treating, examining

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27 ² The harmless error rule applies to the review of
28 administrative decisions regarding disability. See Garcia v. Commissioner, 768 F.3d 925, 932-33 (9th Cir. 2014); McLeod v. Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011).

1 physician). Notwithstanding Plaintiff's reference to "a treating
2 medical opinion" and Plaintiff's urging of the "specific and
3 legitimate reasons" standard,³ Dr. White was neither a treating
4 physician nor an examining physician (A.R. 441).

5
6 An ALJ may reject the opinion of a non-treating, non-examining
7 physician merely "by reference to specific evidence in the medical
8 record." Sousa v. Callahan, 143 F.3d 1240, 1244 (9th Cir. 1998);
9 cf. Social Security Ruling 96-8p ("if the RFC assessment conflicts
10 with an opinion from a medical source, the adjudicator must explain
11 why the opinion was not adopted"). In the present case, the ALJ
12 referenced sufficiently specific evidence and explanation to justify
13 the RFC's failure to incorporate a restriction to occasional use of
14 the left hand. The ALJ discussed in some detail the reports and
15 opinions of the physicians of record, including reports and opinions
16 of examining physicians who placed no restriction on Plaintiff's use
17 of his left hand.

18
19 Additionally, the ALJ's proper discounting of Plaintiff's
20 credibility amply supports the refusal to incorporate a left hand
21 restriction into the RFC under the circumstances of this case. In the
22 admitted absence of any "medical or clinical findings" supporting a
23 left hand restriction, Dr. White conceded he was giving Plaintiff "the
24 benefit of doubt" by crediting Plaintiff's subjective complaints

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28 ³ See Plaintiff's "Motion for Summary Judgment or
Remand," filed April 25, 2017, at p. 4.

1 regarding an alleged left hand restriction (A.R. 448).⁴ An ALJ may
2 reject the opinion of even a treating physician when the opinion is
3 based on the claimant's properly discounted subjective complaints.
4 See Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001); Morgan
5 v. Commissioner, 169 F.3d 595, 602 (9th Cir. 1999); accord Fair v.
6 Bowen, 885 F.2d 597, 605 (9th Cir. 1989).

7
8 Almost all of the medical evidence of record in the present case
9 supports the RFC assessed by the ALJ. To the extent any of the
10 medical evidence is in conflict, it was the prerogative of the ALJ to
11 resolve such conflicts. See Lewis v. Apfel, 236 F.3d 503, 509 (9th
12 Cir. 2001). When evidence "is susceptible to more than one rational
13 interpretation," the Court must uphold the administrative decision.
14 See Andrews v. Shalala, 53 F.3d 1035, 1039-40 (9th Cir. 1995); accord
15 Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002); Sandgathe v.
16 Chater, 108 F.3d 978, 980 (9th Cir. 1997). The Court will uphold the
17 ALJ's rational interpretation of the evidence in the present case
18 notwithstanding any conflicts in the record.

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27 ⁴ Curiously, Dr. White accorded Plaintiff this "benefit
28 of doubt" notwithstanding Dr. White's belief that all of
Plaintiff's symptoms were "significantly out of proportion to
identifiable physical process" (A.R. 443).

